



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0454; FRL-9966-41-Region 4]

#### Air Plan Approval: North Carolina; Transportation Conformity

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of a revision to the North Carolina State Implementation plan (SIP) submitted by the State of North Carolina on March 24, 2006, for the purpose of clarifying the State's transportation conformity rules consistent with Federal requirements.

**DATES:** This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0454 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nacosta Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can also be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Purpose**

#### *A. Call to States for Conformity SIP Revisions*

In the Clean Air Act (CAA or Act), Congress recognized that actions taken by federal agencies could affect a State, Tribal, or local agency's ability to attain and maintain the national ambient air quality standards (NAAQS). Congress added section 176(c) (42 U.S.C. 7506) to the CAA to ensure federal agencies' proposed actions conform to the applicable SIP, Tribal Implementation Plan (TIP), or Federal Implementation Plan (FIP) for attaining and maintaining the NAAQS. That section requires federal entities to find that the emissions from the federal action will conform with the purposes of the SIP, TIP, or FIP or not otherwise interfere with the State's or Tribe's ability to attain and maintain the NAAQS.

The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit

funding and approvals actions, EPA published two sets of regulations to implement section 176(c). The Transportation Conformity Regulations, (40 CFR part 51, subpart T, and 40 CFR part 93, subpart A) first published on November 24, 1993 (58 FR 62188), address federal actions related to highway and mass transit funding and approval actions. The conformity regulations have been revised numerous times since then.

When promulgated in 1993, the Federal Transportation Conformity Rule at 40 CFR 51.395 mandated that the transportation conformity SIP revisions incorporate several provisions of the rule in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections.

B. *What is transportation conformity?*

Transportation conformity is required under section 176(c) of the CAA to ensure that federally-supported highway projects, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, as well as those areas redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Act for the following transportation related pollutants: ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide, and nitrogen dioxide. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. The transportation conformity regulation is found in 40 CFR part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

*C. Prior Approval of North Carolina Conformity SIP Revisions*

EPA has approved several revisions to the North Carolina SIP to incorporate transportation conformity requirements consistent with the Federal regulations. Initially, on December 27, 2002, EPA approved North Carolina's SIP revision to address consultation requirements and procedures which included memoranda of agreements for areas in North Carolina. *See* 67 FR 78983. On September 15, 2003, EPA approved the Mecklenburg-Union Metropolitan Planning Organization interagency transportation conformity memorandum of agreement. *See* 68 FR 53883. EPA also approved an update to North Carolina's transportation conformity requirements on December 26, 2013, to establish transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and enforceability of certain transportation related control measures and mitigation measures. *See* 78 FR 78272.

**II. Analysis of State's Submittal**

On March 24, 2006, the North Carolina Department of Environment and Natural Resources (now the North Carolina Department of Environmental Quality) submitted a SIP revision to EPA to clarify the applicability of the State's transportation conformity rules. In this direct final rulemaking EPA is taking action to approve changes to regulation 15A NCAC Subchapter 2D, Section .2001, *Purpose, Scope and Applicability*. EPA has taken, will take, or, for various reasons, will not take separate action on all other revisions submitted on March 24, 2006.<sup>1</sup>

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<sup>1</sup> On July 18, 2017, EPA took direct final action on 15A NCAC 2D Sections .0101, .0103, .0810, .1902, .1903 and 15A NCAC 2Q Sections .0103, .0105, .0304, .0305, and .0808. *See* 82 FR 32767. EPA will be taking separate action on 15A NCAC 2D Section.1904 and 2Q Sections .0101 and .0301. EPA did not take action on 15A NCAC 2D Section .1201. because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and is not a part of the federally-approved SIP. Regulation 15A NCAC 2D

The State explained in its submission that North Carolina's rule, as previously written, could be read in two ways. One way is that transportation conformity rules apply to areas identified as nonattainment or maintenance areas by EPA in the Code of Federal Regulations (CFR) or to areas listed in the rule. North Carolina explained the second way that their rule could be read is that transportation conformity rules apply only to areas identified as nonattainment or maintenance areas by the CFR and also identified in the rule. North Carolina explained that the State's intent is to apply transportation conformity rules to areas identified as nonattainment or maintenance areas by EPA in the CFR or to areas listed in the rule. North Carolina also updated its rule to clarify a vague statement in their previous rule that read that transportation conformity rules apply to areas "not in compliance with the primary standard." The State replaced this language with a more specific reference to ozone and PM<sub>2.5</sub> standards.

EPA has reviewed North Carolina's transportation conformity rule changes to ensure consistency with Federal transportation conformity requirements at 40 CFR part 93, subpart A. North Carolina's clarification that transportation conformity requirements apply to areas identified as nonattainment or maintenance areas by EPA in the CFR or to areas listed in the rule is consistent with the Federal transportation conformity requirements in that it does not require a change to the State's rules in order for the requirements to apply. Pursuant to CAA section 176(c) transportation conformity requirements are applicable in relevant nonattainment and maintenance areas without a rule change by the State to be in effect. Thus, EPA is taking direct final action to approve the aforementioned change to North Carolina's transportation conformity provisions as found at 15A NCAC 2D Section .2001. Additionally, EPA is proposing to approve

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Section .1401 was withdrawn by NCDEQ on June 5, 2017. Regulation 15A NCAC 2Q Sections .0508 and .0523 were not acted on because these are title V rules and are not a part of the SIP.

North Carolina's change in section (d) of 15A NCAC 2D Section .2001 to clarify the vague statement that transportation conformity requirements apply to apply to areas "not in compliance with the primary standard" by being more specific in identifying the applicable primary standards of PM<sub>2.5</sub> and ozone. This change is consistent with Federal requirements that transportation conformity requirements do not apply in all areas "not in compliance with the primary standard" but only in nonattainment and maintenance areas for transportation-related pollutants.<sup>2</sup>

### **III. Incorporation by Reference**

In this rule, EPA is taking direct final action to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 15A NCAC Subchapter 2D, Section .2001, *Purpose, Scope and Applicability*, effective November 10, 2005, which incorporates by reference the Federal Transportation Conformity Rule that was restructured and amended on March 14, 2012 (77 FR 14979). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

### **IV. Final Action**

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<sup>2</sup> Transportation conformity requirements do not apply in areas designated nonattainment (or considered as maintenance areas) for lead or sulfur dioxide, although these are primary standards.

<sup>3</sup> 62 FR 27968 (May 22, 1997).

Pursuant to section 110 of the CAA, EPA is approving the changes to the North Carolina SIP regarding the State's transportation conformity requirements. The approval of North Carolina's conformity SIP changes clarifies the State rules and is consistent with Federal transportation conformity requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the Agency may adopt as final those provisions of the rule that are not the subject of an adverse comment. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**V. Statutory and Executive Order Reviews:**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);



- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 7, 2017.

V. Anne Heard

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart II-North Carolina**

2. In § 52.1770 (c), Table 1 is amended under Subchapter 2D Air Pollution Control

Requirements by revising the entry for “Sect .2001” to read as follows:

**§52.1770 Identification of plan.**

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(c) \* \* \*

**Table 1 - EPA Approved North Carolina Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .2000 Transportation Conformity</b>				
Sect .2001	Purpose, Scope and Applicability	11/10/2005	[Insert date of publication in Federal Register], [Insert first page of publication]	
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[FR Doc. 2017-17251 Filed: 8/15/2017 8:45 am; Publication Date: 8/16/2017]